

Cultural Arts Commissioner Comment Form for Chapter IV Ordinance Revisions

Please type your comments into the boxes into the column on the right below. The boxes will expand to provide more space as you type. Comments that are most helpful are those that address the substance of the proposed revisions rather than making suggestions for or revising text. Please review the following definitions that can assist with determining what is appropriate for inclusion in an Ordinance.

- Ordinance – A legal document that directs what shall and, therefore, must be done.
- Policy – A statement of guiding principles.
- Plan – A detailed list of steps and timelines for achieving goals. May include references for guiding policies and ordinances to provide context for the steps and timelines.
- Guidelines – General rules for how a program is administered and managed.

Please type your name here:

Preamble 1) Establish focus and scope of work for the Arts and Culture Program. a) Differentiate Arts and Culture Program work from the Recreation and Parks Department's arts and culture programming. b) Establish scope of integrating arts and culture into economic and community development and tourism.	Commissioner comments: The CAC subcommittee agrees with the need for a preamble and recommends that this section of the ordinance provide overall values and principles to guide the City's investment of tax-payer dollars in arts and culture. The intent of the preamble should be to provide guidance to all City programs that integrate arts and culture, including those managed by the Recreation and Parks Department. It is unclear to the subcommittee as to why the ordinance would need to differentiate between Recreation and Parks department work and work led by the city manager's office in the preamble. Because programmatic work is subject to frequent
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	changes, inclusion of any specific programs in the preamble, regardless of what division or office leads them, would likely result in an ordinance that was quickly outdated.
Article II: Cultural Arts Commission 1) Move process-related language to program guidelines because guidelines are more easily updated than ordinances. Guidelines need to be responsive to how the community evolves. 2) Move budget and project authorities to staff because there is now staff capacity to do this work.	Commissioner comments: 1.) It's unclear what process-related language is referenced in this proposed revision. The CAC subcommittee does not see a need for this change and requests the opportunity to review proposed tracked changes to the current ordinance from city staff to clarify. 2.) The current ordinance does not include project or budget authorities beyond providing recommendations to Mayor and Council, which the CAC subcommittee recommends remain part of the scope of the CAC's responsibilities. Therefore, the subcommittee does not see the need for this change and requests the opportunity to review proposed tracked changes to the current ordinance from city staff to clarify. Overall note - when these revisions were presented to Mayor and Council, it was said that the CAC's charter had not been updated since 1975. This section of the ordinance was revised and approved very recently by Mayor and Council on July 31, 2023. Because this section was recently updated and went through extensive vetting, the CAC subcommittee thinks that it still is an accurate reflection of the priorities for the CAC and does not see the need for additional changes at this time.

Article III: Public Art Program 1) Combine current Article III Works of Art in Public Architecture and Article V Art in Public Places articles into Article III Public Art Program. a) Do not change the funding mechanisms for these programs. b) Suggested because AIPA and AIPP have the similar purposes and processes. They are essentially the same programs. 2) Define roles in program administration so that planning, budgeting, and project and site selection for the Public Art Program is led by staff in consultation with the CAC’s Public Art Committee. 3) Move process-related language to program guidelines because guidelines are more easily updated than ordinances. Guidelines need to be responsive to how the community evolves. 4) Redefine definitions of acceptable public art and eligible sites. a) The field of public art has expanded substantially in the 22 years since the AIPP Article was adopted, and the current definition is limiting.	Commissioner comments: 1) The CAC subcommittee notes that the inherent difference between these two programs is that AIPA requires the integration of public art into the planning phase of new building projects, which allows for key considerations (e.g., engineering requirements) for artworks on an architectural scale and may require more input from experts outside of the public art field to ensure safety and viability with building plans. While the AIPP provides a more flexible option for funding public art works in any public setting, it does not include the same commitment to including public art in city buildings and spaces that AIPA does. The CAC subcommittee does not oppose the integration of these two programs, however, it is not clear from the proposed revisions how the new ordinance would continue to ensure that public art remains a vital and required part of City buildings and spaces. Therefore, we recommend that the CAC has the opportunity to review the new proposed ordinance prior to M&C review to ensure that this requirement is retained, clearly tied to the budget of capital improvement projects, and does not instead use AIPP funding. 2) This proposed revision should reference the overall CAC and not a subcommittee within the CAC (that doesn’t exist yet), since the CAC has the authority to form subcommittees it deems necessary per its charter.

b) Eligible sites would be in the public realm to allow for integration of Public Art into transportation, housing, community development, and tourism plans; and allow for projects done in partnership with other government and private entities. 5) Modify the administrative process to be one in which: a) Staff leads the development of the Public Art Plan in consultation of the CAC's Public Art Committee, recommended by the CAC to the Mayor and Council, and approved by the Mayor and Council. b) The Mayor and Council approve the Public Art Plan and contracts over \$250,000 in alignment with Procurement standards. c) Staff leads project development and site selection in consultation with the CAC's Public Art Committee. d) CAC's Public Art Committee approves final artwork design. e) The Mayor and Council are updated on project progress by staff. 6) Revision #5 is being suggested for the following reasons: a) The Public Art Plan establishes the values and community engagement standards expected by	3) Agree with this proposed revision. Please reference the 2023 draft AIPP implementation plan for the CAC's approved recommendations to inform process in the guidelines. 4) Agree with the need for updated definitions of art (specifically to include performing arts and performance art) and more clarity around eligible sites (specifically to include publicly accessible properties owned/managed by schools and community/homeowner associations, in addition to sectors more broadly suggested in proposed revisions). 5) Since the proposed revisions call for moving process-related language to a Public Art Plan, it is unclear how these proposed revisions would be addressed in the ordinances. The CAC subcommittee recommends that the CAC have the opportunity to review process-related language when staff develops the Public Art Plan prior to M&C review. With that said, the CAC has the following comments for consideration during the development of the Public Art Plan: a) Retain cross-cutting selection committees and full CAC approval for artwork selection - a public art committee (which doesn't exist yet) within the CAC shouldn't be the sole body representing Rockville residents in the selection of public art. b) Refer to the draft AIPP implementation plan developed in 2023 by the CAC and city staff for process recommendations approved by the full CAC. 6) B. The CAC subcommittee recommends that a requirement for broad community engagement at every stage of the public art process be codified in the new ordinance to ensure that this priority is elevated. Process for how and
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the Mayor and Council. This establishes the expectations through a broad policy-level, rather than a case-by-case basis for each public artwork proposal. b) Because staff works with colleagues across departments, community engagement standards set by the Mayor and Council are consistently met. c) Staff regularly work across departments and can integrate Public Art into larger city planning initiatives. d) There is the possibility that the Mayor and Council being the final approving authority would result in 1) a Public Art Project included in a Public Art Plan approved by one Mayor and Council not being approved by a succeeding group of elected officials once art has been selected and recommended, 2) in some jurisdictions, an elected official may not like an approved public artwork and would work to actively intervene in the completion of an artwork overriding the community engagement process and CAC recommendation. e) The Mayor and Council would remain a check and balance to ensure the City's executive leadership and their appointed staff are	when community engagement takes place can be clearly outlined in the Public Art Plan. D. Regarding Mayor and Council approval of public art projects - In the 2023 draft AIPP implementation plan, the CAC recommended that M&C approve all public art projects that are intended for assessioning into the City's permanent art collection and that M&C delegate approval of temporary art to City staff in consultation with the CAC. This would allow the City to support more nimble and responsive art projects at a smaller scale within a planned temporary display period, while still maintaining M&C's authority to approve art projects that are intended to have a lasting presence in the community. The CAC recommended a stronger emphasis on funding temporary works to increase the speed, variety, and quantity of public art projects supported by the city, provide more opportunities for local and emerging artists at lower stakes than large scale permanent works, improve the long-term sustainability of the public art program by reducing the need for ongoing maintenance of permanent public art, and to reduce the burden on M&C to approve smaller scale temporary projects. The CAC subcommittee recommends prioritizing M&C approval of permanent works rather than proposing a monetary threshold for M&C approval. Overall note - More clarity is needed on what happens with existing AIPP funds and how funding mechanisms will be used in the future. Use of AIPP funds should not preclude the City from also continuing to set aside funds from capital improvement projects for AIPA. And
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carrying out values and standards in program and project development and implementation as approved in the Public Art Plan. f) (Please note that the Mayor and Council want to maintain the final approval of artwork.) <u>Community Benefits with the proposed changes:</u> 1) Ability to combine funding mechanisms into one program. 2) Ability to integrate Public Art into larger city plans and initiatives such as transportation, housing and community development, economic development, and tourism. 3) Ability to be responsive to the community. 4) Ability to integrate Public Art in joint projects with government agencies and private entities.	conversely, the City should continue to fund the AIPP set aside regardless of whether or not capital projects are planned.
Article IV: Public Art in Private Development (AIPD) 1) Redefine definitions of acceptable public art. a. The field of public art has expanded substantially in the 22 years since the AIPD Article was adopted, and the current definition is limiting. 2) Redefine “publicly accessible” a. The article allows for art to be installed indoors where it is not publicly accessible. Public Art should be publicly accessible. 3) Define roles in program administration to provide clarity for how the program is administered.	Commissioner comments: 1. The subcommittee notes that a definition of public art might not be applicable for this ordinance since the art is privately owned. 2. Indoor locations that are publicly accessible, like building lobbies should be permitted but perhaps not encouraged. 3. A. The CAC subcommittee notes that the ordinances examples in the public art database provided by city staff from other municipalities often included a Public Art committee that reviewed and approved art in private development. Having review rest solely with the Planning Commission does not seem to be a precedent that is followed by other municipalities. Historically, the CAC has

a. It is not recommended by staff for AIPD program administration to involve the CAC because 1) AIPD is incorporated into the city's Development Review process that already involves the Planning Commission and approval from the Mayor and Council, 2) there is not staff capacity to support CAC involvement in the administration of the AIPD program, 3) staff are professional arts administrators who ensure the Public Art installed on site meets program expectations, 4) the artwork is paid for with private funds and installed on private property, and 5) the development process is complicated and multi-layered, adding another approving body would be onerous for developers. b. It is not recommended by staff that the Ordinance include a provision for an artwork to be removed based upon values because 1) the artwork is installed on private property; 2) the artwork is funded by private dollars; 3) this would likely be considered an infringement upon First Amendment Rights. 4) Eliminate the option for artwork installed on site to be removed after five years at no cost to the developer, or between the first and fifth years at a financial penalty	not been involved in the review of proposed AIPD projects, although the ordinance currently states that the CAC may be involved at the request of the developer. To the subcommittee's knowledge, this has never been requested. If there is a desire from M&C for the CAC to be involved, then perhaps there is an option for the CAC member to be appointed as an ex-officio member of the planning commission, specifically for the purpose of reviewing AIPD plans and providing a recommendation to the Planning Commission. This would eliminate the need for adding another approving body to the process. B. The CAC subcommittee disagrees with proposed revisions that eliminate provisions for when AIPD artwork should be removed. The absence of clear expectations on the maintenance and removal of artwork could potentially cause contentious liability issues for both the City and the property owners. Specifically, the subcommittee recommends that the City strengthen language for prompt removal of artwork that constitutes a public safety hazard or that has fallen into disrepair, and consider stonger penalties for failure to do so, as lack of proper maintenance of AIPD artworks has repeatedly been an issue under the current ordinance. It is unadvisable to include these types of provisions in a separate guidance document in this regard, as guidance doesn't have the same enforceability as city ordinances. The first amendment issues noted by city staff are important to consider, however, the CAC subcommittee recommends that the City's attorneys advise on whether the City is within its rights to impose provisions for the removal of artwork from private property under the first amendment.
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on a sliding scale that is contributed to the city's Friends of the Arts Fund. a. Public Art should be permanent. Temporary public artworks are not recommended because they are just as work intensive as permanent public artworks. Developers are not likely to continuously replace public artworks, particularly after housing in multi-family housing developments is sold and becomes the responsibility of HOAs. It is also onerous on city staff to manage such a temporary public art program without proper staffing. 5) Change the formula currently used to determine the required contribution for qualifying projects to 1% of the cost of the development project not to exceed \$300,000. a. The practice established in the Public Art Field is for required contributions to be 1% of either the value or cost of the development project. b. Many localities add a maximum cap for the required contribution. c. This simplifies the process and avoids confusion and poor customer service created by the current article. d. Maximum caps in other localities range from \$50,000, \$100,000, \$200,000, and \$450,000.	4. Again, eliminating provisions for the removal of AIPD artworks seems like it opens up the City and property owners to potential liability issues. Requiring property owners who "inherit" AIPD artwork to maintain existing works forces them to spend money on artworks that they didn't have a say in the development of, which could potentially also be problematic under the first amendment. Property owners should have the ability to request removal of and be incentivized to replace artworks that have fallen into disrepair, are a safety hazard, or that don't reflect current values (either of the property owner, the city residents who use the property, or both). The comments on temporary art in this proposed revision are unclear, as to the subcommittee's knowledge, temporary art has never been a part of AIPD. 5. The subcommittee recommends that City staff provide references to M&C for specific AIPD programs from comparable and nearby municipalities to review when considering this proposed revision. 6. This proposed revision seems too heavily biased to visual art, which has long been a criticism of the City's public art programs, overall. The proposed revisions seem like it unnecessarily limits how developers and property owners use their own money for the sake of simplifying management of the program. Overall notes - The subcommittee recommends that City staff provide references to M&C for AIPD programs from comparable and nearby municipalities and counties to review when considering this proposed revision. City staff provided the subcommittee with a link
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The suggested \$300,000 is reasonable given the costs incurred for Public Art, the long-range projected increase of costs, and the highest required contribution to date is in the \$300,000 range. 6) Modify the options for how the required contributions can be applied by the developer so that there are only two: to install permanent Public Art on site, the cost of which is equal to 1% of the cost of the development project not to exceed \$300,000; or make a contribution to the Public Art Program equal to 1% of the cost of the development project not to exceed \$300,000. Contributions would fund Public Art in the area where the development so the property value can still benefit from the Public Art. - The most frequently selected option for developers is to install art on site, followed by making a contribution to the Friends of the Arts Fund. - Providing an arts space has only been selected one time. - Providing arts-based infrastructure has never been selected. - Providing a monetary contribution to a qualifying arts nonprofit has been the third most selected option.	to a database with sample ordinances, but the subcommittee noted that the database didn't include any examples from Maryland, notably Montgomery County (which uses an Art Review Panel) and only two nearby municipalities: Alexandria, VA (which notably offers a diverse menu of options that includes performing arts and cultural programming) and Arlington, VA. The ordinance revisions should take into account an analysis of the requirements of nearby jurisdictions and how Rockville compares, as these requirements may influence developers' decisions about where to pursue new development projects. The CAC subcommittee recommends that the revised ordinance add more opportunities for recognition to this program as was recommended in Rockville's 2019 Arts and Culture study. For example, there should be inventories of AIPD artworks and records of amounts spent. Developers and property owners should get public credit for their contributions. Additionally, the subcommittee recommends that revisions to this ordinance should allow for the City to offer more alternatives to the creation of permanent visual art. These not need to be specified in the ordinance, however, the ordinance should also not preclude options such as: - Offering naming rights for arts venues at such locations as the F. Scott Fitzgerald Theatre, King Farm, RedGate, etc. - Encourage and recognize monetary support of Rockville's designated resident companies who perform at the F. Scott Fitzgerald Theatre. - Encourage and recognize monetary support of community art projects at specific City cultural events, such as MLK, Jr. Day, Juneteenth, Pride, and Hometown Holidays.
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i. To date, of the \$475,317.70 made in contributions for the AIPD program, only 7%, or \$34,700.50, has been contributed to qualifying arts nonprofits; and \$441,117.20 or 93% of contributions were made to the city’s Friends of the Arts Fund. ii. Nonprofits receiving those donations have had closest proximity to city staff and that is not an equitable practice. iii. To date, the organizations receiving the contributions are Victorian Lyric Opera Company (\$25,194 or 74% of contributions to qualifying nonprofits); \$2,362.50 each to F. Scott Fitzgerald Literary Festival, Home School Talents, and Rockville Art League; \$1,114.00 to VisArts; and \$850 to Peerless Rockville. <u>Community Benefits with the proposed changes:</u> 1) Permanent Public Art that is publicly accessible. 2) Eliminate confusion for stakeholders and provide excellent customer service. 3) Create a more equitable program. 4) Align with best practices in the Public Art Field.	Further, the subcommittee suggests that the more transparency and accountability is integrated into the AIPD program and offers the following recommendations for consideration: - Publicly identify who on the City staff is in charge of the management of the funds spent by the developer[s], and who on the City staff interfaces with the developer[s]. - Publicly credit developers through an inventory of permanent visual art created through the program. - Publicly state alternatives to permanent visual art that the City is currently seeking and give credit to developers who supported specific alternatives to permanent visual art, such as those noted above. The subcommittee notes that, if the city is interested in pursuing an Arts and Entertainment District designation, this section of the ordinance in particular should be carefully considered to encourage private developers to invest in arts and culture in Rockville broadly, without limiting investment to permanent visual art.
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Additional Comments: The CAC subcommittee has provided the above comments in response to Mayor and Council’s request for feedback. The subcommittee notes that this process would benefit enormously from pausing to develop a master plan for arts and culture to clearly define goals, objectives, and priorities for Rockville. The City’s last Arts and Culture Plan was published in 2011 and the 2019 Arts and Culture study was conducted in order to help inform the development of a new plan. Further, the CAC has been advocating for the City to develop a new Arts & Culture plan for the past several years. We have concerns that revising City ordinances prior to defining clear goals, objectives, and priorities through an Arts and Culture Plan may result in ordinances that do not effectively unify Rockville’s arts and cultural efforts, and may exacerbate existing silos in managing the City’s various arts and cultural programs. The CAC welcomes the opportunity to discuss strategic planning with M&C and City staff. The CAC subcommittee recommends that the City consider providing more clarity in the revised ordinances as to the purpose and intended use of the Friends of the Arts fund. The parameters for use and oversight of the fund should be more clearly articulated within Chapter IV to provide more transparency to residents as to who is contributing to this fund, who makes decisions about it, and who benefits from it. The CAC subcommittee notes that staff indicated that the code revisions are being pursued in order to further implementation of the recommendations from Rockville’s 2019 Arts and Culture Study. To that end, the subcommittee wishes to draw attention to specific aspects of the study that have direct relevance to proposed revisions: ● As was noted above, the study was conducted to support the development of a new arts and culture master plan. The study states in the introduction that it is not intended as a cultural plan and notes that, “Ideally, the City of Rockville will undertake a comprehensive, master cultural planning process where the vision and authority are derived from the residents and taxpayers in Rockville.” ● Under “Recommendation 1: Elevate the function of arts, culture and creativity within the municipal administration,” the study recommends that the portfolio for the City’s Arts, Culture, and History Manager should should focus on arts, culture and creative sector/creative economy development, <u>partnering across City departments and agencies (e.g., economic development, community development, youth development)</u>, and relevant local and county agencies. The subcommittee	

suggests that this recommendation be taken into account when developing the preamble to emphasize unification rather than further siloing of City arts and cultural programs.

- Under “Recommendation 5: Support Rockville as a vibrant cultural and creative center,” the study includes recommendations specific to the City’s AIPD ordinance that the subcommittee has taken into account in its comments on proposed revisions to this ordinance:
 - 5.5 Fully utilize the public art in private development ordinance.
 - 5.5.1 Develop a database of public art works in private development as an addition to the comprehensive inventory of works, and establish a process to recognize and catalogue new works as they are added to the collection.
 - 5.5.2 Establish a clear set of guidelines to track in-lieu of fees collected through private development and a process to encourage developers to support local arts non-profit entities through the in-lieu of fees.

Overall, the subcommittee found it challenging to ascertain how the proposed revisions would be operationalized as ordinance language. For this reason, the subcommittee strongly recommends that the CAC be provided the opportunity to review and provide comments on the draft ordinances prior to review by M&C.